IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

JUDGMENT.

Kailash Chandra vs. Raj.State Electricity Board Jaipur & ors.

S.B. Civil Second Appeal No. 16/1990 against the judgment and decree dated 17.11.1989 passed by the learned District & Sessions Judge, Bhilwara in Civil Appeal No.7/84.

Date of Judgment: April 11, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. G.Vaishnava for the appellant.

BY THE COURT:

This second appeal is against the judgment and decree of the first appellate court dated 17.11.1989 in Civil Regular First Appeal No.7/84 by which the first appellate court confirmed the dismissal of the Suit No.455/79 of the plaintiff dismissed by the trial court on 1.12.1983. Following substantial question of law was framed while admitting the appeal by this Court on 13.2.1990:-

> *1) Whether the appellant was eligible to appear in the departmental examination for the post of Accounts Clerk in pursuance of the Notification No. RSEB/Rectt./F.255/D.892 dated June 21, 1978 as he was a graduate L.D.C., with two years' service in the Boared as on July 31, 1978?"*

Brief facts of the case are that the plaintiff-appellant was appointed to receive training for the post of LDC w.e.f. 13.2.1976. The petitioner was asked to furnish a bond, copy of which has been placed on record as Ex.A.1. According to the plaintiff in fact the plaintiff was appointed as LDC w.e.f. 13.2.1976 and, therefore, he was asked to undergo training for the post of LDC. According to the learned counsel for the appellant, the respondent by issuing order dated 6.2.1976 retrospectively, amended the condition of employment and declared the plaintiff-appellant to be a person under "Pre-Service Training for the post of LDCs." According to the learned counsel for the appellant, that order was void, however, the appellant-plaintiff himself signed the contract of apprentices which is under the Apprentices Act, 1961. Copy of this contract has been placed on record as Ex.A.4 by the defendant-respondent wherein it is mentioned that the appellant has been engaged as apprentice for training in trade of LDC. In para 5 of the said contract, it is mentioned that it shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. Therefore, according to the respondent, on the basis of above document, the plaintiff-appellant was not appointed on the post of LDC on 13.2.1976. It is admitted that the plaintiff-appellant was

confirmed on the post of LDC on 13.8.1976.

For the post of Accounts Clerk, the persons working on the post of LDC and who were graduates and had experience of two years on the post of LDC, they were eligible to appear in the examination conducted for giving appointment on the post of Accounts Clerk. The examination for the selection of Accounts Clerk was held from 8.10.1978 to 10.10.1978. If the plaintiff-appellant's appointment is held to be from 12.3.1976 then he was having the requisite qualification for appearing in the examination for the post of Accounts Clerk of the respondent-Department. The plaintiff-appellant appeared in the examination and he was successful as he cleared the examination but the respondent issued order on 10.8.1979 and cancelled the result of the plaintiff-appellant of the examination for the post of Accounts Clerk on the ground that the persons named in the order dated 10.8.1979 including the plaintiff-appellant, suppressing the facts, appeared in the examination without completion of their service of two years on the post of LDC. The plaintiff-appellant, therefore, being aggrieved against the order dated 10.8.1979, filed the suit for declaration and consequently claimed relief before the courts below. Both the courts below held that the plaintiff's regular appointment on the post of LDC was not from 13.2.1976 and it was from 13.8.1976 and by 31.7.1978, the cut out date, the plaintiff-appellant had not completed two years service on the post of LDC and,

therefore, was not eligible to take examination of Accounts Clerk. Being aggrieved against the judgment of the courts below, the appellant has preferred this appeal and above substantial question of law was framed by this court.

The learned counsel for the appellant submitted that in the bond furnished by the plaintiff-appellant, it is clear that the appellant was given appointment after due selection and in the bond itself it is clearly mentioned that after completion of training, the plaintiff will be absorbed in the service and, therefore, in fact in the process of regular selection the plaintiff-appellant was given appointment by the respondent-Board and that is w.e.f. 13.2.1976. It is submitted that the respondent could not have altered the service conditions of the plaintiff unilaterally and disadvantageous to the plaintiff-appellant as sought to have been done by the office order dated 6.2.1976 (Ex.A.2) . It is also submitted that in fact the appellant's initial appointment concluded in petitioner's absorption in the service as a regular employee on the post of LDC and he was confirmed on 13.8.1976, therefore, the entire period from 13.2.1976 is required to be taken into account while counting the service period of plaintiff-appellant for the post of LDC.

I considered the submissions of the learned counsel for the appellant and perused the reasons given by the two courts below as well as the recored.

It is not in dispute that on 13.2.1976 itself the appellant-plaintiff signed the contract of apprenticeship under the provisions of Apprentices Act, 1961. Under the contract as mentioned above, it is clearly provided that it shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of period of his apprenticeship training. The Apprentices Act, 1961 also nowhere cast any duty upon the employer to give appointment to the persons who are given training under the provisions of the Act of 1961. Therefore, the plaintiff-appellant cannot say that he was regularly appointed w.e.f. 13.2.1976.

So far as Ex.A.1 bond furnished by the plaintiff-appellant is concerned and which has been relied upon by the learned counsel for the appellant, wheein it is clearly provided that " ---------- at the time of the trainee being absorbed into service initially on probation and subsequently on regular basis after he has completed the training to the satisfaction of the Board" and this is a condition imposed upon the trainee to accept the employment, obviously if offered by the employer after completion of the training and if such employment is offered then the trainee will remain on probation and thereafter he may be confirmed in service on regular basis. Therefore, from this condition itself, it is clear that even the probation could not have started from 13.2.1976.

In view of the above, the two courts below rightly held that the plaintiff-appellant was not appointed on the post of LDC w.e.f. 13.2.1976 nor the period of training which preceded his regular appointment can be taken note while counting his service period on the post of LDC.

In view of the above the substantial question of law is decided against the appellant and the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.